



A Union of Professionals

Neil Gorsuch

Siding with corporations and special interests, at the expense of regular Americans

In recent years, the Supreme Court has favored big-money interests while denying access to justice for regular American families. The 2010 *Citizens United* decision flooded American politics with special-interest money that's drowning out the voice and votes of the rest of us. This court also made it much harder for regular Americans to get their day in court by restricting class action lawsuits,¹ raising pleading standards,² and forcing consumers into binding arbitration instead of letting them plead their cases to juries.³ No wonder more than half of all Americans believe the Supreme Court favors corporations over individuals.⁴

Neil Gorsuch would only make things worse. As a federal appellate judge and in his private practice, Gorsuch sided again and again with big business over workers, women, people with disabilities and American consumers:

Gorsuch ruled corporations' religious beliefs supersede employees' healthcare decisions. Gorsuch may be best known for his concurrence in *Hobby Lobby Stores, Inc. v. Sebelius*, the 2013 case involving the Affordable Care Act's contraception mandate that ultimately went up to the Supreme Court. In the *Hobby Lobby* case, he acted to deny American women the right to contraceptive coverage under the Affordable Care Act by allowing certain for-profit, secular companies to exclude contraceptive coverage from their employer-sponsored health insurance plans.⁵

Gorsuch tried to limit securities class action lawsuits, which allow investors to hold Wall Street accountable for fraud and misconduct. He later derided such class actions as a "free ride to fast riches" for plaintiffs' lawyers.⁶

Gorsuch sided repeatedly with employers who denied disability and pension benefits. In a ruling denying benefits to a cancer patient and bone-marrow transplant recipient, Gorsuch wrote that the disability rights law in question did not exist to "turn employers into safety net providers for those who cannot work."⁷ In other rulings, Gorsuch denied benefits to a worker who suffered a spinal injury on the job,⁸ to an employee with a debilitating abdominal disease who needed immediate access to a bathroom on the job,⁹ and to a patient with pulmonary and coronary disease who asked for a jury trial when his long-term disability benefits were denied.¹⁰

Gorsuch ruled against workers 66 percent of the time in employment discrimination cases. According to *Bloomberg BNA*, "Over the past 10 years with the 10th Circuit, Gorsuch has written at least 15 precedential labor and employment rulings. Twelve of those rulings involved federal race, sex, age, disability and political discrimination and retaliation claims. Gorsuch's opinions found in favor of employers ... in eight of the 12 cases."¹¹

Gorsuch has argued for putting the rights of corporations over the health and safety of American workers. Gorsuch's dissent in *TransAm Trucking, Inc. v. Administrative Review Board* showed a callous disregard for a worker's health and safety. This case involved a truck driver who was transporting cargo through Illinois when the brakes on his trailer froze due to subzero temperatures. After reporting the problem to his employer and waiting several hours for a repair truck to arrive, the heat in the cab went out and the driver began to experience serious health problems due to the cold, so he unhitched his truck from the trailer and drove away. He was terminated for abandoning the trailer. Gorsuch's lone dissenting opinion would have upheld that firing. He wrote: "It might be fair to ask whether [the employer's] decision was a wise or kind one. But it's not our job to answer questions like that."¹² In *Compass Environmental, Inc. v. OSHRC*, an excavator operator died on the job after being electrocuted by an overhead power line at a surface mine site. The Occupational Safety and Health Review Commission found a serious violation of safety regulations and imposed a \$5,550 fine on the employer, which the

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employer appealed. While the majority of the court upheld the commission's findings against the employer, Gorsuch dissented, contending that this case was yet another example of administrative agencies wielding "remarkable powers" and "penalizing" the company even when no evidence existed.¹³

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- 1 *Comcast Corp. v. Behrend*, www.bloomberglaw.com/public/desktop/document/Comcast_Corp_v_Behrend_No_11864_2013_BL_80435_57_CR_1487_US_Mar_2?1488906937; *AT&T Mobility v. Concepcion*, https://www.bloomberglaw.com/public/desktop/document/ATT_Mobility_LLC_v_Concepcion_131_S.Ct_1740_179_L_Ed_2d_742_2011_?1485998261.
 - 2 *Bell Atlantic Corp. v. Twombly*, www.supremecourt.gov/opinions/06pdf/05-1126.pdf.
 - 3 *American Express v. Italian Colors Restaurant*, www.supremecourt.gov/opinions/12pdf/12-133_19m1.pdf.
 - 4 "Findings from Recent Polling on the Supreme Court," memorandum, May 19, 2014, <https://perma.cc/X2HA-BCXT>.
 - 5 "Hobby Lobby and Executive Power: Gorsuch's Key Rulings," *CNN*, Feb. 1, 2017, www.cnn.com/2017/01/31/politics/hobby-lobby-executive-power-gorsuch-key-rulings/.
 - 6 "As Private Lawyer, Trump High Court Pick Was Friend to Business," *Fox Business*, Feb. 1, 2017, www.foxbusiness.com/politics/2017/02/01/as-private-lawyer-trump-high-court-pick-was-friend-to-business.html.
 - 7 "Supreme Court Nominee Neil Gorsuch Has a Troubling History When Ruling on Disability Rights Cases," *Common Dreams*, Feb. 6, 2017, www.commondreams.org/views/2017/02/06/supreme-court-nominee-neil-gorsuch-has-troubling-history-when-ruling-disability.
 - 8 *Lucas v. Liberty Life Assurance Co.*, www.bloomberglaw.com/public/desktop/document/Lucas_v_Liberty_Life_Assurance_Co_of_Boston_444_Fed_Appx_243_52_E?1485444635.
 - 9 *Niedens v. Continental Casualty Co.*, www.bloomberglaw.com/public/desktop/document/Niedens_v_Contl_Cas_Co_258_Fed_Appx_216_10th_Cir_2007_Court_Opini?1485446171.
 - 10 *Hart v. Capgemini*, www.bloomberglaw.com/public/desktop/document/Hart_v_Capgemini_US_LLC_547_Fed_Appx_870_57_EBC_2332_10th_Cir_20171485444818.
 - 11 "Gorsuch Would Bring Conservative Bent to Labor Cases," *Bloomberg BNA*, Jan. 25, 2017, www.bna.com/gorsuch-bring-conservative-n73014450227/.
 - 12 *TransAm Trucking, Inc. v. Administrative Review Board*, www.ca10.uscourts.gov/opinions/15/15-9504.pdf.
 - 13 "7 Things You Need to Know about Supreme Court Nominee Neil Gorsuch," *AFL-CIO Now*, Feb. 7, 2017, www.aflcio.org/Blog/Political-Action-Legislation/7-Things-You-Need-to-Know-About-Supreme-Court-Nominee-Neil-Gorsuch; *Compass Environmental, Inc. v. Occupational Safety and Health Commission*, <http://caselaw.findlaw.com/us-10th-circuit/1588948.html>.